

# CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 5/24/2012

Action Requested By:  
Legal

Agenda Item Type  
Resolution

Subject Matter:

Change in control of Ardmore Telephone Company, Inc.

Exact Wording for the Agenda:

Resolution regarding change in control of Ardmore Telephone Company, Inc. (Ord. No. 03-969, adopted and approved November 20, 2003)

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost:

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head 

Date: 5-21-12

**RESOLUTION NO. 12-\_\_\_\_\_**

**WHEREAS**, pursuant to Ordinance No. 03-969, adopted November 20, 2003, ("Ordinance") the City of Huntsville, Alabama ("City") granted to Ardmore Telephone Company, Inc., ("Ardmore") the right to use the public rights-of-way in connection with its communications network, subject to the terms and conditions of said Ordinance; and

**WHEREAS**, said Ordinance was for an initial term of 5 years commencing on the date of its acceptance by Ardmore on December 11, 2003, with the possibility of two additional terms of 5 years each, subject to the provisions of the Ordinance; and

**WHEREAS**, the initial term of the Ordinance has expired and in accordance with the Ordinance Ardmore exercised its rights to extend the Ordinance for an additional 5 year term which is due to expire on December 11, 2013, unless further extended in accordance with said Ordinance; and

**WHEREAS**, through its Operations Manager in the attached Exhibit A, which is incorporated herein by reference, Ardmore has requested that the City: (i) consent to a change-in-control from its former individual shareholders to Telecom Management Services, Inc., a Tennessee corporation jointly owned by West Kentucky Rural Telephone Cooperative Corporation, Inc. and Ben Lomand Rural Telephone Cooperative, Inc., in accordance with section 13 of the Ordinance and (ii) waive any deficiencies in obtaining prior consent for the change in control, and, in support thereof, has represented to the City its qualifications and willingness to adhere to the terms and conditions of the Ordinance.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council for the City of Huntsville that consent to the change in control is hereby granted, any deficiencies in obtaining prior consent to the change in control are hereby waived, and the Mayor is hereby authorized to execute the attached consent letter on behalf of the City of Huntsville, Alabama.

**ADOPTED** this the 24th day of May, 2012.

\_\_\_\_\_  
President of the City Council  
of the City of Huntsville, Alabama

**APPROVED** this the 24th day of May, 2012.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

A Telecommunications Company

May 17, 2012

**VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY**

Ms. Claudia Anderson, Esq.  
City Attorney's Office  
City of Huntsville  
308 Fountain Circle  
Huntsville, Alabama 35801

**RE: Ardmore Telephone Company Incorporated  
Ordinance No. 03-969**

Dear Ms. Anderson:

As you know and as we have discussed, Ardmore is a party to that certain Ordinance No. 03-969 – An Ordinance Respecting the Use of the Public Rights-of-Way in the City of Huntsville, Alabama (the “City”) by Ardmore (the “Ordinance”), whereby the City has granted Ardmore a non-exclusive right to use and occupy its Rights-of-Way with respect to fiber cable in connection with Ardmore’s telecommunication services. Section 13 of the Ordinance requires Ardmore to obtain the City’s written consent in the event of a change-in-control of Ardmore. As such, Ardmore hereby requests the City’s consent to (i) the change-in-control of Ardmore from its former individual shareholders to Telecom Management Services, Inc., a Tennessee corporation (“TMS”) jointly owned by West Kentucky Rural Telephone Cooperative Corporation, Inc. (“West Kentucky”) and Ben Lomand Rural Telephone Cooperative, Inc. (“Ben Lomand”) and (ii) a waiver of the notice provisions contained in such Section 13.

While the Transaction has provided Ardmore with the combined resources and efficiencies of West Kentucky and Ben Lomand through TMS, including the access to additional capital, the transaction did not affect in any material manner Ardmore’s corporate identity, its business structure or core services provided. Accordingly, Ardmore has been and will continue to be regulated as a public utility by the Federal Communications Commission, the Tennessee Regulatory Authority and the Alabama Public Service Commission. Additionally, Ardmore has and will continue to conduct its business operations in the same manner as prior to the Transaction in all material respects.

Ardmore has and will continue to adhere to the terms and conditions of the Ordinance. As such, we would appreciate your consent to the change-in-control described in this letter and the waiver of notice provisions in Section 13 of the Ordinance. Please acknowledge, agree and consent to the change-in-control of the Ordinance and the Transaction by signing this letter in the space provided below.

In connection with the execution and delivery of this letter, Ardmore acknowledges and agrees that any waiver by the City contained herein or otherwise evidenced by this letter shall not effect or in any way waive any other rights the City may now or in the future have under the Ordinance.

We apologize for any inconvenience and look forward to continuing our longstanding relationship with the City.

If you have any questions or would like additional information, please do not hesitate to contact me.

Very truly yours,



Ray Widner  
Operations Manager

cc: Trevor Bonnstetter  
J. Gray Sasser

Acknowledged, agreed and consented to:

THE CITY OF HUNTSVILLE

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_